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bcc

Subject Important letter missing from PUC website

Aloha

It seems a relevant letter is missing from the PUC website.

I understand that the letter is from Molokai Properties Limited (MPL), a party in the PUC proceedings, to Mayor Charmaine Tavares, and is dated July 10, 2008.

The letter is signed by Peter A. Nicholas, Executive Director.

The relevancy of the letter is that there is currently speculation of what MPL's intentions are come August 31, 2008. In his July 10 letter to Mayor Tavares, Mr. Nicholas strongly infers that MPL's utilities will continue in operation should the PUC approved the rate increase the PUC is seeking to allow the utilities to continue operating.

His insight should be reliable considering the fact that besides being Executive Director of MPL, he is the sole officer and director of MPL's three regulated utility companies; Molokai Public Utilities Inc. (MPU), Waiola O Molokai Inc (Waiola) and MOSCO, Inc. MPU and Waiola are water delivery utilities and MOSCO provides wastewater treatment services.

At the time of Mr. Nicholas's July 10, 2008 letter the rates being proposed by the PUC would have required Molokai residents pay MPL and its utility companies on an annualized revenue basis an additional \$461,604 over and above the revenues received by its two water utility companies during 2007.

Mr. Nicholas insisted on more of a rate increase than the PUC was proposing, and on August 14, 2008, the PUC formally approved the approximate rate increase demanded by Mr. Nicholas, which was almost double the annual revenue (\$895,095) than the revenue increase referenced in Mr. Nicholas's July 10 letter to Mayor Tavares.

The PUC gave what Mr. Nicholas demanded for his utility companies, which makes the July 10 letter even more relevant.

Therefore there seems little doubt that Mr. Nicholas will continue operating his water utility companies past the August 31, 2008 deadline he set for terminating water delivery services to the residents of central and west Molokai.

This should put all those at ease who may be speculating on what Mr. Nicholas plans to do come August 31, assuming they are willing to have some faith that Mr. Nicholas was being up and up in stating his intentions to Mayor Tavares in his July 10 letter.

Several weeks ago, Abbey Mayor, the Governor's Director of the Office of State Planning mentioned that "bankruptcy" may provide a way for MPL's utilities to fold up shop on August 31. At the time, Mr. Mayer mentioned that MPL was not

interested in pursuing this option.

At a meeting on Molokai earlier this week attended by several community members and various State and County officials, Mr. Mayer, Chair of the Governor's Molokai Action Team, read from a recent Department of Health (DOH) order. He pointed out that DOH had done its job and "pierced the corporate veil" between MPL and its utility companies, noting that MPL is merely an "alter ego" of its utility companies.

Based on Mr. Mayer's presentation, it appears that without MPL having the veil protection of its land assets, which appraised at \$200 million in 2006, this may give Mr. Nicholas cause to pause if he is deciding whether or not to go the bankruptcy route.

It seems Mr. Nicholas's two water utilities (Waiola and MPU) certainly would qualify for bankruptcy. Waiola's liabilities exceed its assets by \$3,633,240 and MPU's liabilities exceeds its assets by \$1,744,131, mainly due to the fact that Mr. Nicholas's MPL, doing business as Molokai Ranch, has loans out to Mr. Nicholas's Waiola and MPU utility companies in the amounts of \$5,323,839 and \$3,036,989 respectively.

The income statements for the utility companies do not reflect any line item suggesting that any interest or principal payments are being made on these loans.

As mentioned earlier in this email, Mr. Nicholas is the sole officer and director of both Waiola and MPU, as well as, being the President, Executive Director and one of three Directors of MPL. He is also Vice President of GuocoLeisure Limited, the Singapore based billion dollar company which owns 100% of MPL.

But you never know what Mr. Nicholas will do. MPL's business strategies seem to blow with whatever wind prevails for the benefit of GuocoLeisure's Executive Chairman Quek Leng Chan and his company shareholders.

There was some talk at a recent community meeting that Mr. Nicholas has engaged the services of a high profile bankruptcy attorney, who probably does not come cheap.

This sort of flies in the face of Mr. Nicholas's financially-down-and-out, "essentially insolvent" portrayal of his utility companies.

Maybe the new bankruptcy attorney is being paid through GuocoLeisure, the parent company that has advanced money to its subsidiary in the past. (see financial info on GuocoLeisure website...for the last several years its Executive Chairman Tri San Quek Leng Chan has reported in the company's annual report to shareholders that GuocoLeisure's Molokai operations continue to be "cash positive"...a point headlined in a recent the Honolulu Star Bulletin article reporting on GuocoLeisure's sudden business decision to shutdown its Molokai operations.)

Mr. Nicholas has been telling the PUC, the Consumer Advocate, the County of Maui and the lower income families on Molokai that are being burdened with rate increases of up to 178% for water, that his utility companies have no money, or any access to money, to even pursue a permanent rate increase at this time.

What is Mr. Nicholas planning to do six months from now if he has to meet the PUC's August 14 order that "within six months MPU and Waiola shall file an application for a general rate increase with the commission if a third-party is not found to take over the utility systems"?

If Mr. Nicholas doesn't have the money now to file for a general rate increase, where is he going to get the money in six months if his operations are shut down for business reasons.

The PUC has confirmed that the law provides the commission the ability to fine each of the utility companies \$25,000 a day if they defy an order of the PUC. That works out to be \$50,000 a day, \$1,500,000 a month, \$18,000,000 a year.

A PUC spokesperson noted that as far as he could not recollect the PUC ever fining company \$25,000 a day for violating one of its orders.

Then again, the PUC has probably never had to deal with such defiant, foreign controlled companies such a GuocoLeisure, MPL and their private utility companies.

At the July 15 PUC sponsored public hearing held in Maunaloa Molokai, Commission Chair Caliboso seemed to think it was fruitless to fine the utilities because they didn't have the ability to pay the fines.

Mr. Caliboso's conclusion was reached before the DOH rendered its final order concluding that MPL essentially has no "corporate veil" protection for its assets against liabilities created by its "essentially insolvent" utility companies.

How this plays out is anyone's guess. Mr. Nicholas and GuocoLeisure seem to have an unending stack of hole cards to play, which is curious at best, given their not-so-local corporate attitudes.

It's a game of Texas hold'em between the State (DOH and PUC) and Mr. Nicholas and GuocoLeisure, and to this point MPL seems to have prevailed as the big winners.

Back to the letter missing from the PUC website.

Mr. Nicholas's July 10 letter shows a copy going to the PUC.

The letter was also copied to Senator Inouye; Senator Dan Akaka; Representative Mazie Hirono, Ed Kubo, US Attorney; Mark Bennett, Attorney-General; Maui County Councilman Danny Mateo; Abbey Mayer, Director of Hawaii State Office of Planning; Alexis Strauss, US EPA, Region 1X; and Tan Sri Quek Leng Chan, Executive Chairman, GuocoLeisure Limited (100% owner of Molokai Properties Limited, doing business as Molokai Ranch).

Mr. Nicholas, for whatever reason, did not provide a copy of his letter to the Consumer Advocate Catherine Awakuni.

It seems the world has a copy of Mr. Nicholas's July 10 letter.

Hopefully, the PUC will put Mr. Nicholas's July 10 letter on the website so the public will have access to this letter via the PUC's website.

Thank you for any assistance you are able to provide in having the letter placed on the PUC website.

Please call if you have any questions (283-8171)

Sincerely,

DeGray Vanderbilt